

## Section 1326 - Sale of Tobacco; Licensing

**1326.01 Definitions.** Unless the context clearly indicates otherwise, the following terms have the meanings given them in this Subsection:

**Tobacco or Tobacco Related Product** shall mean any substance or item containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cutting and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

**Tobacco Related Device** shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco related products.

**Self-Service Merchandising** shall mean the open displays of tobacco or tobacco related products, or tobacco related devices in any manner where any person shall have access to the tobacco or tobacco related products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee.

**Moveable Place of Business** shall mean any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

**Minor** shall mean any natural person who has not yet reached the age of eighteen (18) years.

**Retail Sale** shall mean any transfer of goods for money, trade, barter, or other consideration.

**Vending Machine** shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco or tobacco related products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco or tobacco related product, or tobacco related devices.

**Compliance Checks** shall mean the system the City of Edina uses to investigate and ensure that those authorized to sell tobacco or tobacco related products, and tobacco related devices are following and complying with the requirements of this Section. Compliance Checks shall also mean the use of minors who attempt to purchase tobacco or tobacco related products, or tobacco related devices for education, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State or local laws and regulations relating to tobacco or tobacco related products, and tobacco related devices.

**1326.02 License Required.** No person shall keep tobacco or tobacco related products, or tobacco related devices for retail sale or sell tobacco or tobacco related products, or tobacco

related devices at retail in the City without first obtaining a license from the City. No license shall be issued for the sale of tobacco or tobacco related products, or tobacco related devices at a movable place of business or from a vending machine.

**1326.03 License Procedure.** The provisions of Section 160 of this Code shall apply to all licenses required by this Section and to the holders of such licenses, except that licenses shall be issued or denied by the Sanitarian. The applications for a license shall be on forms provided by the Sanitarian and shall be accompanied by the fee set forth in Section 185 of this Code.

**1326.04 Term of License.** Each license issued pursuant to this Section shall expire on March 31 of each calendar year.

**1326.05 Rules and Regulations.**

Subd. 1. **Legal Age.** No person shall sell any tobacco or tobacco related product, or tobacco related device to any minor.

Subd. 2. **Controlled Substances.** No person shall sell or keep for sale any tobacco containing any controlled substance as defined in Section 1030 of this Code, except nicotine or tobacco.

Subd. 3. **Vending Machine and Moveable Place of Business.** No person shall sell any tobacco or tobacco related product, or tobacco related device from a vending machine or from a moveable place of business.

Subd. 4. **Self-Service Merchandising.** No person shall sell any tobacco or tobacco related product, or tobacco related device by means whereby the customer may have access to such items without having to request assistance from an employee of the licensed premises. The assistance or intervention shall entail the actual physical exchange of the tobacco or tobacco related product or tobacco related device between the customer and the licensee or employee. All tobacco or tobacco related products, or tobacco devices shall be stored or displayed behind a sales counter or in other rooms or display areas which are not freely accessible to customers. Provided however, the requirements of this Subd. 4 shall not apply to establishments which, i) prohibit minors from entering the establishment unless accompanied by a parent or legal guardian, ii) post notice advising of the prohibition is conspicuously displayed at all entrances to the establishment and, iii) either derive at least ninety percent (90%) of their revenues from the sale of tobacco and tobacco related products or limit self service merchandising to cigars and cigar related products.

Subd.5. **Illegal Possession.** No minor shall have in his or her possession any tobacco or tobacco related product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in compliance checks.

Subd. 6. **Illegal Use.** No minor shall smoke, chew, sniff, or otherwise use any tobacco or tobacco related product, or tobacco related device.

Subd. 7. **Illegal Procurement.** No minor shall purchase or attempt to purchase or otherwise obtain any tobacco or tobacco related product, or tobacco related device, and no person shall purchase or otherwise obtain such items on behalf of a minor. No person shall coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use

any tobacco or tobacco related product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in compliance checks.

Subd. 8. **Use of False Identification.** No minor shall attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

**1326.06 Compliance Checks and Inspections.** All licensed premises shall be open to inspection by the City or other authorized official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over fifteen (15) years but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco or tobacco related products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor unlawful possession of tobacco or tobacco related products, or tobacco related devices when such items are obtained or attempted to be obtained as a part of the compliance check. No minor used in the compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age for which he or she is asked. Nothing in this Subsection shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

**1326.07 Violations.** The following notification and hearing process will apply to violations of this Section.

Subd. 1. **Notice.** Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violations and which shall inform the alleged violator of his or her rights to be heard on the accusation.

Subd. 2. **Hearings.** If a person accused of violating this Section so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3. **Hearing Officer.** The City Council shall serve as the hearing officer until such time a hearing officer is appointed by the City Council.

Subd. 4. **Decision.** If the hearing determines that a violation of this Section did occur, that decision along with the reasons for finding a violation and the penalty to be imposed under Subsection 1326.08 of this Section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5. **Appeals.** Appeals of any decision made by the Hearing Officer shall be filed in Hennepin County district court.

Subd. 6. **Misdemeanor Prosecution.** Nothing in the Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Section. If the City elects to seek misdemeanor prosecution, an administrative penalty may also be imposed.

Subd. 7. **Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**1326.08 Penalties.** The following administrative penalties will be applied as set forth below.

Subd. 1. **Licensees.** Any licensee found to have violated this Section, or whose employee shall have violate this Section, shall be charged an administrative fine of \$75.00 for the first violation of this Section; \$200.00 for the second offense at the same licensed premises within a twenty-four month period; \$400.00 for a third offense at the same location within a twenty-four month period and the license shall be suspended for not less than seven days; and \$500.00 for a fourth offense at the same location within a twenty-four month period. In addition, after the fourth offense, the license shall be revoked.

Subd. 2. **Other Individuals.** Other individuals, other than minors regulated by Subdivision 3 of this Subsection, found to be in violation of this Section shall be charged an administrative fee of \$50.00.

Subd. 3. **Minors.** Minors who use or are found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco or tobacco related products, or tobacco related devices, shall be charged an administrative fee of \$75.00 per offense or a minimum fee of \$25.00 and satisfactory completion of a diversion program acceptable to the City.

Subd. 4. **Misdemeanor.** Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Section.

**1326.09 Exceptions and Defenses.** Nothing in this Section shall prevent the providing of tobacco or tobacco related products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Section for a person to have reasonably relied on proof of age as described by State law.

*History: Section 1325 repealed; Ord 1997-17 adopted 12-15-97*

*Cross Reference: Sections 160, 185, 1030*